

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 03-1576V

Filed: July 13, 2010

Not to be Published

MIKE DAVIS and
MARY ANN DAVIS,
as parents of
KIMBERLY DAVIS,
a minor,

Petitioners,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Dismissal; Failure to Follow Court
Orders; Failure to Submit Supporting
Medical Records or Expert Opinion;
Failure to Prosecute

DECISION¹

The above-named petitioners filed a Short-Form Autism Petition For Vaccine Compensation on June 30, 2003. Thereafter, petitioners failed to file medical records and/or a “Statement of Compliance with Phase One Medical Records Production” as ordered by the undersigned on July 15, 2008, July 22, 2009, and October 7, 2009.

¹ Because this decision contains a reasoned explanation for the undersigned’s action in this case, the undersigned intends to post this decision on the United States Court of Federal Claims’ website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction “of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, “the entire” decision will be available to the public. Id.

The undersigned repeatedly warned petitioners that noncompliance with court Orders would not be tolerated and could lead to dismissal of petitioners' claim. See Order filed July 22, 2009; Order filed October 7, 2009. Further, the undersigned warned petitioners in the court's October 7, 2009 Order that "failure to follow court Orders, as well as failure to file medical records, or an expert medical opinion shall result in dismissal of petitioners' claim." Order filed October 7, 2009 citing Tsekouras v. Sec'y of HHS, 26 Cl. Ct. 439 (1992), 991 F.2d 810 (Fed. Cir. 1993) aff'd per curiam without opin.; Sapharas v. Sec'y of HHS, 35 Fed. Cl. 503 (1996).

Petitioners have failed to file any medical records or the opinion of an expert to support petitioners' claim in the instant case.² Additionally, petitioners have failed to respond to any of the court's Orders in any manner in the instant case. Accordingly, pursuant to Vaccine Rule 21(b), the undersigned dismisses petitioners' claim for failure to prosecute or comply with the Vaccine Rules, or the court's Orders. The Clerk shall enter judgment accordingly.

IT IS SO ORDERED.

Denise K. Vowell
Special Master

² The Vaccine Act provides that a special master cannot find that a petitioner has proven her case by a preponderance of the evidence based upon "the claims of a petitioner alone, unsubstantiated by medical records or medical opinion." 42 U.S.C. § 300aa-13 (a). Petitioners' failure to file medical records has prevented the undersigned from addressing any aspect of the merits of petitioners' claim.